

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between:

**FRATERNAL ORDER OF POLICE,
LODGE No. 5**

-AND-

**AWARD
AND OPINION**

CITY OF PHILADELPHIA, PA

Docket No. 14 390 00856 11

(Corporal Bernita S. Jones-Wiggins [REDACTED])

BEFORE: ERNEST WEISS, ARBITRATOR

APPEARANCES: For the Union: MARK L. GELEMAN, Esq.
JENNINGS SIGMOND, P. C.

For the City: DIANE LOBELL, ESQ.
ASST. CITY SOLICITOR

ISSUE: Was the discharge of Corporal Bernita S. Jones-Wiggins
[REDACTED] PR [REDACTED] effective April 1, 2011 for just cause and
if not, what shall be the remedy?

PRELIMINARY STATEMENT

Having been selected in accordance with the provisions of the Collective Bargaining Agreement between the above parties, I conducted an arbitration hearing on April 4, 2013 at the offices of the American Arbitration Association in Philadelphia, PA, at which time the parties were afforded an opportunity to present evidence and argument in support of their respective positions.

BACKGROUND

On March 24, 2010, the son of Corporal Bernita Jones-Wiggins, the grievant herein, was arrested for aggravated assault when he fired a handgun through a window in the direction of his girlfriend, after an argument.

Having learned of his arrest the grievant appeared at his apartment about 5:30 PM. but was informed by an officer guarding the scene at the entrance of the building that she is not permitted to enter until the detectives finished serving the warrant. However, she returned some hours later about 9:30 PM and barged into the apartment stating "I want to know what you are taking I want to see what is in that room." (J2) Officer K [REDACTED] blocked her path as she tried to get around her to go further into the secure crime scene which was the home of her son B [REDACTED] E [REDACTED]. Detectives T [REDACTED] and S [REDACTED], searching another room, heard the commotion and approached the grievant. She became loud and argumentative with Officer K [REDACTED] and Detective S [REDACTED] stepped between them. They insisted that she must leave and escorted her downstairs.

This was the third occasion that the grievant was disciplined when she was found to have knowingly intervened and/or interfered with police investigations involving the arrests of her two sons. The first occurred November 21, 2004 involving her son B [REDACTED] E [REDACTED] age 19. Here the

grievant received a 25 day disciplinary suspension upheld by Arbitrator Peck, Jr. The second occasion occurred on March 15, 2005 resulting in the grievant's termination effective October 28, 2007, for essentially the same charges of Conduct Unbecoming an officer, Section 1.0 as well as Section 1.75. Both grievances were arbitrated separately and sustained in part and denied in part. In the second case, her discharge was reduced to a 30 day disciplinary suspension by Arbitrator Long.

POSITION OF THE CITY

The City argued in relevant part that the grievant was clearly on notice after her two former arbitrated disciplinary incidents involving her two sons where she was found to have intervened in a police investigation.

In the second incident her discharge was reduced to a 30 day disciplinary suspension by arbitrator Long. After two arbitrations of essentially the same transgression of Conduct Unbecoming, the grievant was clearly aware of the consequences of attempting to get involved in a police investigation of her sons.

Officer C [REDACTED] who was working on the crime scene testified that the grievant arrived about 5:00 PM on the scene and gave her her phone number. Also she informed her that she was the mother of the occupant of the crime scene. Officer C [REDACTED] promised that she would call her when the investigation was completed. However, the grievant arrived again about 9:30 PM. And entered the apartment building through another entrance. About three feet inside the apartment, she encountered officer K [REDACTED] who informed her that she may not be there since the investigation was still in progress. The grievant became agitated and started yelling.

Detective J [REDACTED] S [REDACTED] testified in relevant part that the investigation involved a shooting from the window of the apartment in the direction of the occupant's girlfriend who was walking in the parking lot. He also stated

that during the search the detectives discovered various illegal drugs and drug paraphernalia. During his investigation in another portion of the apartment, he heard the loud voices coming from the front room of the apartment. The grievant was informed again that she must leave the crime scene. She replied that she was a corporal and she knew what to do. In his written statement, Detective S [REDACTED] also stated that the grievant became irate toward Officer K [REDACTED]. She became loud and was finger pointing at the officer. "I think she was trying to pull rank, but she was of duty."(C8) He also informed her that if she did not leave she would be reported to her supervisor. She was then escorted down the steps and out of the building.

The City argued that the grievant was guilty of repeated conduct. She was found guilty by two Police Commissioners and two previous arbitrators who sustained disciplinary suspensions for essentially the same interfering behavior during investigations of her two son's previous arrests.

The grievant submitted a complaint in writing regarding the rude treatment she received when she appeared at her son's apartment. However, Lieutenant Thompson of the Internal Affairs Division, who investigated her written complaint, found that she knew that she was violating the Department Policy when she insisted on being at the crime scene in question. Additionally, she failed to disclose to him that she had been there earlier in the evening and was informed that she cannot remain on the scene during the investigation. Lieutenant Thompson concluded that there was no basis for the written allegations made by the grievant. Also, she remained silent about her earlier evening visit to the apartment and failed to tell him that she left her phone number with P/O C [REDACTED].

In fact, P/O C [REDACTED] who was working the scene, testified that the grievant initially arrived about 5:00 PM. She was not permitted to go up to her son's apartment. The grievant left her phone number with her and P/O C [REDACTED] promised that she would call her at the conclusion of the search.

However, C [REDACTED] testified that when she arrived again at about 9:30 PM when the investigation was still in progress, she was loud and agitated.

A second detective, T [REDACTED] T [REDACTED] testified that in addition to the Domestic Aggravated assault there was some clothing in the apartment described in a local robbery. However, he was in another portion of the apartment and did not hear any shouting.

Finally the City argued that given her past disciplinary suspensions, she was clearly on notice of the future consequences in her behavior of attempting to interfere in a police investigation.

The City also pointed out that the grievant was disciplined twice by direct action of two separate Police Commissioners and was clearly aware and forewarned of the consequences of attempting to interfere in the investigations but she ignored her responsibility and the oath of her office to uphold the law.

As a result the City asked that the grievant be found to have repeatedly violated the Department policy as charged and to find that there was just cause for her dismissal and the grievance herein to be denied.

POSITION OF THE FOP

The FOP argued in relevant part that the grievant Corporal Jones-Wiggins [REDACTED] was discharged not for just cause.

She testified at the instant arbitration that she was hired on January 2, 1995. She also stated that she has two sons. On 3/24/10 she was informed by phone that her older son B [REDACTED] was arrested earlier that day for aggravated assault when he allegedly shot a bullet through his window in the direction of his girlfriend. She drove to his apartment building close to 5:00 PM. When she arrived she saw that an officer was guarding the scene. The officer informed her that she cannot go up to the apartment until the detectives finished serving the search warrant. She gave the officer her

phone number and asked to call her when the search of the apartment was completed.

However, she returned at about 9:30 on her way to work. She entered the building through another entrance. She testified that she stopped at the open door to the apartment and there was a confrontation about her presence. Detective S [REDACTED] appeared from the back bedroom and instructed her to leave. She further testified that she did not understand why Detective S [REDACTED] was so angry about her presence. She further stated that she never yelled or cursed at any time and did not touch anything in the apartment. She also pointed out that she had the key to the apartment since she paid the rent. The following morning she was informed that the crime scene was released.

Under cross examination she stated that she wrote a memorandum to her supervisor (C1) regarding the rude treatment she received when she appeared at the apartment at 9:30 PM. Detective T [REDACTED] yelled at her to leave the scene. Under further questioning she agreed that she was aware of Directive No. 2 Responsibilities at Crime Scenes. "Supervisory and Command personnel not involved in the investigation will remain outside of the crime scene"(C4)

The FOP argued in relevant part that the City is painting with too broad of a brush, based upon the two previous arbitrations involving the grievant. It is arguing that the grievant was clearly aware of her behavior then as well as now. The evidence does not show that she violated some specific work rules. There was no showing that she was two feet inside the apartment and no evidence that she interfered with the activities of the detectives conducting the investigations. There was not a scintilla of evidence that she affected the crime scene or jeopardized the outcome of the investigation. She was no more than three feet inside the apartment living room.

The evidence was inconsistent about her behavior and alleged loud resistance when she was asked to leave the crime scene immediately.

The FOP insisted that grievant was discharged not for just cause. It asks that she be reinstated with full back pay, a make whole remedy and expunging of the unjust discharge from her personnel record.

DISCUSSION AND OPINION

It is generally accepted in arbitration that in disciplinary cases the Employer has the burden of proving by a preponderance of the credible evidence that a punishable transgression has occurred.

The ultimate disciplinary action such as a discharge, must be analyzed in the context of the particular circumstance and the fact pattern associated with the specific alleged transgressions.

In determining whether the "punishment fits the crime" a number of factors must be considered, including the nature and the frequency of the transgression, the practice and policy in this particular work environment and any other relevant circumstance related to the discipline as it may impact on the generally accepted elements of just cause.

In this instance, the grievant had committed her proverbial third strike when she knowingly appeared and entered the protected crime scene on March 24, 2010.

She had been issued formal progressive discipline initially for a similar transgression of interfering in a police investigation involving her sons on November 21, 2004, for which she was suspended for twenty (25) days without pay, for having in part, "...allowed her son to attempt to avoid identification by instructing him to wear her police jacket and badge."

(Arbitrator Peck Jr. 7/18/08)

The second occasion was on March 15, 2005 when she was notified that her son D [REDACTED] W [REDACTED] was involved in a burglary of items valued about \$90,000.00 but the grievant failed to take appropriate police action. Additionally, the grievant was charged with Conduct Unbecoming 1.75 and this was the second time that she obstructed justice on behalf of one of her sons and was guilty of repeated violation under Rule 1.75. However, in that case Arbitrator Long reduced her dismissal to a 30-day suspension on July 9, 2009 holding that she committed Conduct Unbecoming an Officer (unspecified) but did not violate Rules 1.12 and 1.75.

The third incident, resulting in the instant arbitration, occurred on March 24, 2010, only eight months after she was reinstated by Arbitrator Long.

Having been progressively disciplined so recently she was clearly aware of the existing policy against Conduct Unbecoming an Officer, Section 1.75 when she deliberately entered her son's apartment after she had been informed earlier in the evening that it was a secure crime scene and was refused entrance. This was the third such incident when she knowingly intervened and/or interfered in existing investigations involving her sons. Under such circumstances I must find that her dismissal was clearly self-inflicted.

Having thoroughly considered all the evidence and testimony made before me, including the arguments and allegations of both parties, I have concluded for the above reasons, that the discharge of Corporal Bernita Jones-Wiggins was, by the nature of her repeated violations of Conduct Unbecoming an Officer, Article I Section 1.00 (unspecified) and Section 1.75 for just cause and I make the following Award.

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The undersigned arbitrator, having been designated in accordance with the Arbitration Agreement entered into by the above parties, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

The grievance is denied.

For the above stated reasons the City of Philadelphia PA. did not violate the Collective Bargaining Agreement between the parties when it discharged Corporal Bernita S. Jones-Wiggins [REDACTED] PR [REDACTED] effective April 1, 2011.



ERNEST WEISS, ARBITRATOR

STATE OF: NEW JERSEY
COUNTY OF: SOMERSET

On this 23rd day of April 2013, before me personally came and appeared Ernest Weiss, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed same.